

FILED BY CLERK

NOV 16 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0034
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT ERIC HAYES,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20082291

Honorable Edgar B. Acuña, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Diane Leigh Hunt

Tucson
Attorneys for Appellee

Robert J. Hirsh, Pima County Public Defender
By David J. Euchner

Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 After a jury trial,¹ appellant Robert Hayes was convicted of one count of transportation of marijuana for sale.² The trial court sentenced him to a presumptive term of five years' imprisonment. On appeal, Hayes argues the court erred in denying his motion to suppress evidence obtained during a warrantless stop of a vehicle in which he was travelling, claiming the stop was not supported by reasonable suspicion. Because the court properly ruled, we affirm.

Background

¶2 In reviewing a trial court's ruling on a motion to suppress, we consider "only the evidence presented at the suppression hearing." *State v. Schinzel*, 202 Ariz. 375, ¶ 12, 45 P.3d 1224, 1227 (App. 2002). We view that evidence and reasonable inferences therefrom "in the light most favorable to sustaining the trial court's ruling." *State v. Rosengren*, 199 Ariz. 112, ¶ 2, 14 P.3d 303, 306 (App. 2000). Narcotics police officers Paiaina and Bingham were watching the parking lot of a local shipping facility for evidence of drug shipments. Based on their training and experience, the officers identified several "typical indicators" that someone might be attempting to ship illegal drugs. The "typical indicators" observed here included: (1) appearing nervous or anxious; (2) making multiple trips into the shipping facility before taking the box in to be

¹The sentencing minute entry indicates that Hayes pled guilty and was not convicted after a jury trial. The record and trial court's oral pronouncement of sentence, however, clearly establish that Hayes was found guilty after a jury trial.

²Hayes's opening brief indicates that he was convicted of two offenses: transportation of marijuana for sale and possession of marijuana for sale. But the trial court dismissed the possession charge, and it was therefore only presented to the jury as a lesser included offense.

shipped; (3) sending overnight shipments; and (4) paying in cash. The fact that a package is being sent to New York also may indicate the shipment of narcotics because New York is the number one destination city for drug parcels. And shipments of illegal drugs are generally packaged in boxes measuring approximately “14 by 14 by 12” inches that are “either taped or glued shut . . . [to] prevent odor from—the contraband from being detected outside the box.”

¶3 Officer Paiaina saw a vehicle enter the shipping facility parking lot and park at a distance from the facility. One of the vehicle’s passengers entered the facility and returned with a shipping label. Another passenger then exited the vehicle carrying a “14-by-14 size box,” which she took into the facility to be shipped. A third passenger, later determined to be Hayes, “continually looked around the parking lot, over his shoulder . . . [and] appeared to be very nervous, anxious[,] . . . even paranoid.” After the package was shipped, the vehicle left the parking lot.

¶4 Based upon the behavior of the vehicle’s occupants, the officers decided to investigate the package the occupants had attempted to ship. The package was being shipped overnight to New York, and the vehicle’s occupants had paid approximately \$128 in cash. The officers were unable to verify the destination’s existence by calling the telephone information service. The seams of the box were also taped shut. Relying on his knowledge of typical indicators of illegal drug shipping, Officer Bingham decided there was reasonable suspicion to stop the vehicle.

Discussion

¶5 Hayes challenges the trial court’s denial of his motion to suppress evidence, claiming the stop of the vehicle violated his constitutional rights because it was not supported by reasonable suspicion of criminal activity.³ Citing *Wong Sun v. United States*, 371 U.S. 471 (1963), Hayes therefore claims that a business card and several shipping labels seized during the stop should have been suppressed as “fruit of the poisonous tree.” When reviewing a trial court’s denial of a motion to suppress based upon “an alleged Fourth Amendment violation, we defer to the trial court’s factual findings, including findings on credibility and the reasonableness of the inferences drawn by [police] officer[s], but we review de novo mixed questions of law and fact and the trial court’s ultimate legal conclusions.” *State v. Teagle*, 217 Ariz. 17, ¶ 19, 170 P.3d 266, 271 (App. 2007); *see also State v. Wyman*, 197 Ariz. 10, ¶ 5, 3 P.3d 392, 395 (App. 2000).

¶6 “An investigatory stop of a vehicle constitutes a seizure under the Fourth Amendment.” *State v. Fornof*, 218 Ariz. 74, ¶ 5, 179 P.3d 954, 956 (App. 2008). “[A] police officer may make a limited investigatory stop in the absence of probable cause[, however,] if the officer has an articulable, reasonable suspicion, based on the totality of the circumstances, that the suspect is involved in criminal activity.” *Teagle*, 217 Ariz.

³Hayes also contends the stop was unreasonable under Article 2, section 8 of the Arizona Constitution and claims that this court should review the stop under the Arizona Constitution because “Justice Bales invited the argument in his dissent in *State v. Gant*,” 216 Ariz. 1, 162 P.3d 640 (2007). But even if Justice Bales did invite such an argument, Hayes is still required to make it. And Hayes’s argument is undeveloped and supported by little authority and is therefore waived. *See Ariz. R. Crim. P. 31.13(c)(1)(vi); State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995).

17, ¶ 20, 170 P.3d at 271-72. “Although ‘reasonable suspicion’ must be more than an inchoate ‘hunch,’ the Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory detention.” *Id.* ¶ 25. “In reviewing the totality of the circumstances, we accord deference to a trained law enforcement officer’s ability to distinguish between innocent and suspicious activities.” *Id.* ¶ 26.

¶7 Based on the totality of the circumstances, the trial court did not err. Before stopping the car and detaining its occupants, police observed that Hayes and his companions exhibited behavior that, based on the officers’ experience, suggested they were involved in the shipping of narcotics. *See Teagle*, 217 Ariz. 17, ¶ 26, 170 P.3d at 273 (“[W]e accord deference to a trained law enforcement officer’s ability to distinguish between innocent and suspicious actions.”). The vehicle was parked a distance from the door of the shipping facility, and Hayes looked around the parking lot suspiciously as his companions mailed the package. The package was sent overnight, paid for in cash, and sent to the number one drug shipping destination in the country. It was also taped along the seams, and the destination address could not be verified. Although, as the trial court noted, the “facts cited by the . . . detectives taken individually do not point to any illegal activity by any of the parties involved,” when taken together, the facts demonstrate each of the various “indicators” of narcotic shipping and therefore amount to reasonable suspicion.⁴ *See State v. O’Meara*, 198 Ariz. 294, ¶ 7, 9 P.3d 325, 326 (2000) (“In

⁴Because we conclude officers had reasonable suspicion to stop Hayes’s vehicle, we need not decide whether the subsequent search of the package at the shipping facility was, as Hayes contends, “fruit of the poisonous tree.”

deciding whether the police have a particularized and objective basis for suspecting that a person is engaged in criminal activity, we look at the ‘whole picture.’”); *see also In re Twenty-Four Thousand Dollars in U.S. Currency*, 217 Ariz. 199, ¶ 17, 171 P.3d 1240, 1244-45 (App. 2007) (although some facts when taken alone may not establish reasonable suspicion of criminal activity, court must look at facts “in combination” when determining if reasonable suspicion exists).

¶8 Hayes nonetheless contends that the indicators relied upon by the officers to stop the vehicle were “either overbroad or . . . contradicted by the same officers during their testimony” and therefore did not establish reasonable suspicion. But Hayes’s argument is essentially a challenge to the trial court’s determination of the officers’ credibility and the reasonableness of the inferences they had drawn from their observations. As we explained above, these matters are left to the trial court’s discretion. *See Teagle*, 217 Ariz. 17, ¶ 19, 170 P.3d at 271.

¶9 The investigatory detention of the vehicle was lawful, and the trial court did not err in denying Hayes’s motion to suppress. Therefore, we affirm the conviction and the sentence imposed.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge